completeness of Judge Jensen's recollections and statements. As for the PROMIS Oversight Committee, committee investigators were told that detailed minutes were not kept at any of the meetings, nor was there any record of specific discussions by its members affecting the INSLAW contract. The records that were available were inordinately sparse and often did not include any background of how and why decisions were made.

To date, former Attorney General Meese denies having knowledge of any bias against INSLAW by the Department or any of its officials. He stated, under oath, that he had little, if any, involvement with the INSLAW controversy and that he recalls no specific discussion with anyone, including Department officials about INSLAW's contract with Justice regarding the use or misuse of the PROMIS software. This statement is in direct conflict with Judge Jensen's testimony, that he briefed Mr. Meese regularly on this issue and that Mr. Meese was very interested in the details of the contract and negotiations.

One of the most damaging statements received by the committee is a sworn statement made by Deputy Attorney General Arnold Burns to Office of Professional Responsibility (OPR) investigators in 1988. In this statement, Mr. Burns stated that Department attorneys had already advised him (sometime in 1986) that INSLAW's claim of proprietary rights in the Enhanced PROMIS software was legitimate and that the Department had waived any rights in these enhancements. Mr. Burns was also told by Justice attorneys that the Department would probably lose the case in court on this issue. Accepting this statement, it is incredible that the Department, having made this determination, would continue to pursue its litigation of these matters. More than $1 million has been spent in litigation on this case by the Justice Department even though it knew in 1986 that it did not have a chance to win the case on merits. This clearly raises the specter that the Department actions taken against INSLAW in this matter represent an abuse of power of shameful proportions.

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According to Judge Bryant:

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Considering that the Deputy Attorney General was aware of INSLAW's proprietary rights, the Department's pursuit of litigation can only be understood as a war of attrition between the Department's massive, tax-supported resources and INSLAW's desperate financial condition, with shrinking (courtesy of the Department) income. In light of Mr. Burns' revelation, it is important to note that committee investigators found no surviving documentation (from that time frame) which reveal the Department's awareness of the relative legal positions of the Department and INSLAW, on INSLAW's claims to proprietary enhancements referred to by Mr. Burns.

E. INSLAW Declares Bankruptcy and Pursues Litigation

By February 1985, at least $1.6 million in contract payments had been withheld by the Department and INSLAW was forced to file for chapter 11 reorganization in the Bankruptcy Court for the District of Columbia.[78] On June 9, 1986, INSLAW filed a Complaint for Declaratory Judgment, and for an order Enforcing Automatic Stay[79] and Damages for Willful Violation of Automatic Stay in the Bankruptcy Court.[80] In its pleadings, INSLAW asserted that Mr. C. Madison Brewer, who was responsible for implementing PROMIS throughout the Department, was instrumental in propelling INSLAW into bankruptcy, and that he thereafter hindered INSLAW in its development of a reorganization plan.[81] INSLAW also alleged that the Department had improperly converted and exercised control over INSLAW's proprietary Enhanced PROMIS and that its concerns were made known to the highest levels of Department management, without any departmental response.[82]

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[79] The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It stops all collection efforts, all harassments, and all foreclosure actions, giving the debtor temporary relief from creditors. The automatic stay allows the Bankruptcy Court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed orderly and efficiently, unimpeded by uncoordinated proceedings in other arenas.

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be considered as if it "never happened." The Department has not yet compensated INSLAW for its illegal and improper use of software that was found to be proprietary to INSLAW by two courts. Furthermore, Justice officials cannot escape accountability merely because the Appeals Court has reversed the lower court's rulings based on a procedural ruling.

As the DOTBCA judge concluded, there definitely remains a cloud over the Department's handling of INSLAW's proprietary software. Department officials should not be allowed to avoid accountability through a technicality or a jurisdiction ruling by the Appeals Court and INSLAW deserves to receive equitable consideration of its claims.

An impartial inquiry needs to be undertaken to assess the facts and potential culpability of the actions involved. Strategic gamesmanship has no place when the full weight and resources of the enforcement arm of the Government is pitted against a private interest, whose financial ability to litigate may have been compromised by the very departmental actions in dispute. In addition, should the Department not resolve this matter fairly and expeditiously, the dispute should be referred through a bill to the Chief Judge of the Claims Court whereby the statute of limitations can be suspended. To recover in such a case a claimant must show that (1) the Government committed a negligent or wrongful act, and (2) this act caused damage to the claimant.[98]

The litigation of a congressional reference case is fully adversarial once the pleading is complete. It proceeds like any other court case through discovery, pretrial, trial, the submission of requested findings and briefs, and decision. After the case is heard, a hearing officer's report is submitted to the Congress, together with the findings of facts. The hearing officer must provide sufficient conclusions to inform Congress:

> ...whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitable due from the United States to the claimant.[99]

There is a distinct possibility that the extent of damages to INSLAW (particularly the Department's distribution of INSLAW's proprietary PROMIS) will never be fully known. Department documents provide evidence of distribution of PROMIS to at least one foreign government. There are also numerous allegations of widespread distribution to other foreign governments.

I. Department Encourages Contract Mediation While It Hinders Settlement

It is important to document that another equivocal effort to mediate the INSLAW dispute was initiated on June 28, 1990, when the Department requested the Appellate Court to consider INSLAW for the Appellate Mediation Program.[100] This action on

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[98] See Shane, supra at 304.

[99] 28 U.S.C. § 2509(c).

[100] The Appellate Mediation Program operates under a court order issued on November 28, 1988, and amended on April 19, 1989. The program is intended to benefit the parties by providing a forum which encourages the settlement of cases, or at least the resolution or simplification

Continued

the Department's part appeared significant because it was it's first mediation request out of the 13 appeals submitted since January 1989. However, the success of this program requires that confidentiality be ensured throughout the mediation process. Information concerning cases screened by the Chief Staff Counsel's Office is not to be shared with judges or with anyone outside the court. The judges do not know which cases are selected for mediation. [101]

However, for some unexplained reason, the Department failed to comply with this most basic requirement. On October 3, 1990, Ms. Linda Finklestein, Circuit Executive of the District of Columbia Circuit Court, contacted INSLAW's counsel and referred to an October 1, 1990, Washington Post article, which revealed that mediation had been requested by one of the parties. The article, cited to a departmental spokesman stated:

> that the department has requested that the matter [INSLAW] be considered for mediation by the appeals court, in an attempt to settle the long-running dispute. [102]

This disclosure was completely contrary to the standards of the Appellate Program pursuant to the order of the court. The effect was to force INSLAW to withdraw from the program after only 3 months. It is difficult to understand the Department's strategy by this action. It may be that the Department wanted to maintain the facade of working diligently to settle a sticky contract dispute while working behind the scenes to sabotage it and keep pressure on INSLAW by forcing it to expend additional resources on legal support during the mediation process. If this is the case, the Department was successful. But the Department also succeeded in maintaining a near-flawless record of seeking delay over resolution and raising the level of suspicion about its motives to a point where the public trust in the untarnished pursuit of justice is subject to grave doubts.

IV. SIGNIFICANT QUESTIONS REMAIN UNANSWERED ABOUT POSSIBLE HIGH LEVEL CRIMINAL CONSPIRACY

A. Allegations of Conspiracy and Intrigue Continue To Surround the INSLAW Controversy

The Hamiltons have alleged that high level Department officials conspired to steal the PROMIS software system. According to their allegations, the theft involved a number of stages which included: (1) the failure of the Department to comply with the terms and conditions of the contract with INSLAW; (2) attempts to force into bankruptcy and force the sale of PROMIS through liquidation of the company; (3) the attempted hostile buyout of INSLAW by a computer company owned by Dr. Earl Brian, a friend and former associate of Attorney General Meese; (4) the providing of the Enhanced PROMIS system to Dr. Brian by high level Department officials; (5) the modification of the PROMIS system by individuals as-

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of some of the issues, through an independent and neutral mediator. Source: Brochure issued by the court entitled, "Appellate Mediation Program."

[101] Ibid.

[102] October 1, 1990, Washington Post article, entitled: "Obsessed by a Theory of Conspiracy," p. 24.

proceeding that the Department of Justice had engaged in improper conduct.

The Report expresses basic agreement with Judge Bason's view of the evidence, although Members of the Committee on the Judiciary are not in a position to conclude one way or the other whether Judge Bason's findings—hotly contested by the Department of Justice—accurately reflect what actually transpired. Members of the Committee—other than possibly the Chairman—did not participate in this long investigation conducted by Majority investigative staff with the substantial assistance of GAO detailees. The testimony the Subcommittee on Economic and Commercial Law received from a few people involved in INSLAW litigation during a December 5, 1990, hearing on access to certain INSLAW documents is no substitute for direct familiarity with the voluminous record. We cannot assess the credibility of the many government witnesses who testified in the bankruptcy court without the benefit of hearing from them ourselves.

Although the district court affirmed the bankruptcy court's order in most respects, the United States Court of Appeals for the District of Columbia concluded that the bankruptcy court lacked jurisdiction and therefore reversed the district court and directed the dismissal of INSLAW's complaint. The United States Court of Appeals for the District of Columbia—after noting that "[t]he bankruptcy and district courts here both concluded that the Department 'fraudulently obtained and then converted enhanced PROMIS [software] to its own use'"—commented that "[s]uch conduct, if it occurred, is inexcusable." [Opinion, p. 15.] We find ourselves in the similar position of criticizing the conduct described by lower courts "if it occurred."

The Report erroneously claims that DOJ litigated the INSLAW matter "even though it knew in 1986 that it did not have a chance to win the case on merits"—and observes that "[t]his clearly raises the specter that the Department actions taken against INSLAW in this matter represent an abuse of power of shameful proportions." The only support for these sweeping statements, however, appears to be a misconstruction of a 1988 DOJ Office of Professional Responsibility interview with Deputy Attorney General Arnold Burns. In that interview, Mr. Burns recounted that "I wanted to know, as a lawyer, why we didn't make a claim against INSLAW for the royalties on the theory that we were the proprietary owners." [OPR Interview, p. 12.]

This context relating to a possible DOJ counterclaim is critical to understanding Mr. Burns' comment that DOJ lawyers were "satisfied that INSLAW could sustain the claim in court, that we had waived those rights...." Mr. Burns goes on to point out in the Office of Professional Responsibility interview that he "had concluded in good faith...that unless there was movement on their [INSLAW's] part on that [proprietary rights] issue, not having anything to do with our counterclaim then, just a question of whether they have the right to collect royalties from us, that this was not susceptible of settlement and I so advised Mr. Ratiner [INSLAW's attorney] on August 28, 1986." [OPR Interview, p. 13.] Mr. Burns apparently learned that DOJ had waived its rights to seek royalties from INSLAW (by way of a counterclaim) for making the PROMIS

software available to others but never suggested that INSLAW had a legitimate claim against the Department or that the Department had waived its right to oppose such a claim. The August 28, 1986, letter Mr. Burns refers to states explicitly: "We believe that Inslaw's claim for license fees is wholly without merit, and that your client's expectations with respect to compensation in this regard are entirely unjustified and unjustifiable."

The unidentified correspondence that Mr. Burns refers to as waiving rights[1] may be a subject of some discussion in the Report itself. The Report points out that INSLAW's attorney, in a May 26, 1982, letter to Associate Deputy Attorney General Stanley E. Morris, "provided a detailed description of what the company planned to do to market the software commercially...." Mr. Morris' response can be viewed as acquiescing to sales by INSLAW to third parties.

In view of the Report's heavy reliance on its construction of a small part of a single interview with the Office of Professional Responsibility, it seems unusual that the Report cites no effort to question Mr. Burns in the course of the Committee's investigation. This omission appears particularly glaring in view of other evidence contradicting the Report's perception of how DOJ viewed the merits of its case. Justice Management Division General Counsel Janis Sposato, for example, "concluded [in 1985] that INSLAW's claim to its privately financed enhancements had no merit." [83 B.R. 89 at 154 (Bkrtcy. D. Dist. Col. 1988).] Although the Report claims that DOJ "fought two judgments that it believed were in error based on technical, legal issues rather than on the merits of the case," DOJ's appellate brief in the district court contains 65 pages devoted to arguing that various factual findings by Judge Bason are clearly erroneous.

The Report's repeated references to the Department of Justice's violation of the automatic stay are confusing in view of the ruling on this point by the United States Court of Appeals for the District of Columbia in the INSLAW litigation. Circuit Judge Williams' opinion for the Court states:

> Inslaw claimed that the Department had violated the stay provision by continuing, and expanding, its use of the software program in its U.S. Attorneys' offices. The bankruptcy court found a willful violation..., and the district court affirmed on appeal.... Because we find that the automatic stay does not reach the Department's use of property in its possession under a claim of right at the time of the bankruptcy filing, even if that use may ultimately prove to violate the bankrupt's rights, we reverse. [Court of Appeals opinion, p. 3.]

The lower courts erroneously construed Bankruptcy Code Section 362 [automatic stay]—and the Report perpetuates that misconstruction in spite of the appellate decision.

Judge Bason's opinion is particularly critical of the PROMIS Project Manager in the Executive Office of U.S. Attorneys. At an earlier point in his career, C. Madison Brewer had served as gen-

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The lower courts erroneously construed Bankruptcy Code Section 362 [automatic stay]—and the Report perpetuates that misconstruction in spite of the appellate decision.

Judge Bason's opinion is particularly critical of the PROMIS Project Manager in the Executive Office of U.S. Attorneys. At an earlier point in his career, C. Madison Brewer had served as gen-

[1] "...that somebody in the Department of Justice, in a letter or letters, as I say in this back and forthing [sic], had, in effect, waived those rights." [OPR Interview, p. 12.]

UNITED STATES DEPARTMENT OF JUSTICE

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In the Matter of: :

Office of Professional :

Responsibility :

Investigation No. 86-0170

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Washington, D.C.

Wednesday, March 30, 1988

Interview of ARNOLD I. BURNS, a witness herein, called for examination by counsel for Office of Professional Responsibility in the above-entitled matter, pursuant to notice, the witness being duly sworn by KAREN K. BRYNTESON, a Notary Public in and for the District of Columbia, taken at the U.S. Department of Justice, 10th & Constitution Avenue, N.W., Washington, D.C., at 2:35 p.m., Wednesday, March 30, 1988, and the proceedings being taken down by Stenotype by KAREN K. BRYNTESON and transcribed under her direction.

APPEARANCES:

On behalf of the Office of Professional Responsibility:

ROBERT B. LYON, JR., ESQ.
DAVID BOBZIEN, ESQ.
U.S. Department of Justice
Office of Professional Responsibility
Room 4304
10th & Constitution Avenue, N.W.
Washington, D.C.

ALSO PRESENT:

GREG WALDEN, ESQ.
Associate Deputy General

C O N T E N T S

P R O C E E D I N G S

Whereupon,

ARNOLD I. BURNS,

was called as a witness by counsel for the Office of Professional Responsibility, and having been duly sworn by the Notary Public, was examined and testified as follows:

MR. LYON: Could the record reflect that it is 2:35 p.m. on Wednesday, March 30th, 1988. We are in the conference room of the Deputy Attorney General of the United States Department of Justice. Today's witness will be the Deputy Attorney General, Arnold I. Burns.

My name is Robert Lyon, L-y-o-n, Office of Professional Responsibility. With me is my colleague, David Bobzien, also of the Office, who is an assistant counsel, and Associate Deputy Attorney General, Greg Walden, is also in attendance this afternoon.

The purpose of this interview is to pose questions to the Deputy Attorney General which deal with the administrative investigation being conducted by the Office of Professional Responsibility pursuant to 28 C.F.R. Section 0.39.

The investigation that is being conducted is a result not only of a referral from the Deputy's Office of last fall asking us to look into all INSLAW issues

that have been raised in a ruling by the bankruptcy judge for the District of Columbia, George Bason, that dealt with a number of Department employees but also with a referral from the Assistant Attorney General for the Criminal Division, William Weld, last month of allegations that had been sent to the Criminal Division by William Hamilton who is the president of INSLAW, Inc.

I think the best way to proceed at this point, Mr. Burns, is just to get these allegations as they appear in the submissions that we received and I will do that one at a time.

EXAMINATION BY COUNSEL FOR THE
OFFICE OF PROFESSIONAL RESPONSIBILITY
BY MR. LYON:

Q. Do you recall sending a letter -- we have to apologize for not having the letter available at this moment. I have somebody in JMD trying to find it right now.

Apparently you sent a letter in August 1986 to William Hamilton that addressed a possible settlement of a number of issues outstanding at the time between the Department of Justice and INSLAW, Inc. and I think, as I understand it -- Mr. Walden has provided a copy of this letter and I hand it to you at this time and ask you to

read that.

A. I have in my hand a Xerox copy of a letter written by me dated August 28, 1986 addressed to Mr. Leigh S. Ratiner, R-a-t-i-n-e-r, who was counsel for the Hamiltons at that time.

(Pause)

THE WITNESS: I have now reviewed the letter.

BY MR. LYON:

Q. Would you tell us generally what your reasons were for writing that letter and what the thrust of the letter was?

A. Yes. What had happened was that, I think when I was up for consideration to become Deputy Attorney General, and I became Deputy Attorney General on July 24th, 1986, I believe, so we can fix this in time. It is my present recollection -- and Greg Walden was with me counseling me at the time, and to the extent that I say something that appears incorrect, I hope he would correct me -- but it is my recollection at the time of the confirmation hearings for me that the Hamiltons injected themselves into that process in some way.

And I recall having received a letter from a United States senator, I don't for the moment remember which United States senator, I think it was the one from Delaware or Maryland, Maryland, I think, stating that he

thought that the Hamiltons had gotten a raw deal, that's the vernacular, I don't remember the letter, they were not getting a fair shake and would I look into the matter.

And I undertook, and I think it was part of the confirmation process now that I think of it, that as part of that process, I undertook in a letter that I wrote to the committee, Judiciary Committee, that I would, indeed, do that.

Following my confirmation as Deputy Attorney General -- Greg are you listening to this?

MR. WALDEN: Yes, I am.

THE WITNESS: Rather than wait, as most people I would suspect would for somebody to revive their consciousness, I took the initiative to keep my commitment to do just that.

Here it is. It was Senator Mathias from Maryland and this is a letter dated July 9th, 1986 which dovetails into what I said about my confirmation date, and it says "Dear Senator Mathias, I am in receipt of your recent letter. Thank you for your interest in the INSLAW matter. I can assure you that if I am confirmed as Deputy Attorney General, I will" -- and then there are five undertakings, and I will hand you this letter. You can have it.

One of the undertakings is that I will familiarize myself with the INSLAW matter and I will try to address the issues, I will try to see if we can settle it. I will let you know, if you ask me, what the status of it is. And the last one is to take precautions to try to avoid similar situations in the future.

So in fulfillment of that commitment, I called a meeting of all of the people probably around this very table and Mr. Ratiner was there. I don't think Mr. Hamilton was present.

MR. WALDEN: He was not.

THE WITNESS: I don't think I have ever met Mr. Hamilton. It was a very peculiar session, as I recall dimly now, peculiar in the sense that -- I am scratching my mind, I haven't thought of this for a while -- peculiar in the sense that Ratiner handed me a long letter which was written by Mr. Hamilton. I don't know whether we have it here. My recollection now is that it might have been six or seven pages -- let's see if we can find it -- setting forth a long, long complaint about his treatment, handling by the Department of Justice.

It was peculiar in the sense because one would have expected the lawyer to have, in effect, made that

presentation. And here is the letter dated August 21, 1986.

MR. WALDEN: That is the date of the meeting too.

THE WITNESS: Which is also the date of the meeting. How many pages did I say it was?

MR. BOBZIEN: Six or seven.

THE WITNESS: It is six pages. I haven't seen it since then.

I am not going to bother reading it now because I don't think it is important. If it later becomes important, we can read it together.

MR. BOBZIEN: You were there, Greg was there and Ratiner and anyone else?

THE WITNESS: Oh, yes, I imagine we must have had people, I would guess Stu Schiffer may have been there. I am not sure.

MR. WALDEN: I think Dean Cooper and perhaps Chris Cohen.

MR. BOBZIEN: I saw some reference that Ratiner had an associate there, Richard Conway. Does that ring a bell?

MR. WALDEN: I don't remember.

THE WITNESS: Might have, but it rings no bell. I started to say, I don't remember now whether I

finished my thought, that I would have expected Ratiner to have made that presentation, but I read the letter while we were sitting there -- and, Greg, you correct me if you think this is wrong -- I think he said to me, in effect, that this was Mr. Hamilton's position. And it struck me at the time that he did not say: And I subscribe to it 100 percent or I think this is right. He just said: I am the conduit, I am passing it on to you.

Is that your recollection?

MR. WALDEN: Yes.

THE WITNESS: And then he talked about the case and he did make a little lawyer's presentation and I would have liked to have, as a new room, to have brought everyone together. And I reviewed the letter again, as I said I would, and I thought that the case could be settled and would have liked to settle it.

Without remembering any of the details, the case boiled down to a ledger account, an accounting: You owe me this for that, you owe me this for that, I owe you, you owe me, I owe you and so forth, with disputes about who owes what but the kind of a dispute that lawyers settle, readily susceptible to settlement with each party going home unhappy from a settlement, and that's the best kind of a settlement.

But there was one fly in the ointment and that's the wording I used in the letter. And the fly in the ointment was a claim that the United States Government, the Department of Justice, owed INSLAW a big, big sock of money in respect of, and I think royalties, having to do with this PROMIS system that INSLAW had developed, the claim being on behalf of INSLAW that they owned the proprietary rights to this and, therefore, to the extent the Department of Justice continued to use it, we were incurring an obligation to pay them the reasonable value of the use which would be, in these terms, measured by a royalty.

That was the fly in the ointment. Why? Because as it was explained to me, the PROMIS system had been developed by INSLAW pursuant to a grant by the United States Government, pursuant to a grant by us, the Department of Justice, the United States Government to INSLAW of a big sock of dough. And they, in effect, were developing this for the Department of Justice with Department of Justice money, working hand-in-glove as we sometimes do untold with other vendors or contractors.

Under circumstances which, it struck me as a lawyer at the time, hearing this as a new room, as a very peculiar notion. It struck me that in those circumstances, that the proprietary rights to this

belonged to the Department of Justice and that if anything, the tables were turned the other way and that INSLAW should pay the Department of Justice royalties to the extent that they were vending or selling or leasing or whatever they do to outsiders, to third parties.

Now, I should also tell you that in talking to my lawyers, I became sort of a little aggressive on this issue, as a lawyer, aggressing an issue, not aggressing people but addressing and aggressing an issue. And I wanted to know, as a lawyer, why we didn't make a claim against INSLAW for the royalties on the theory that we were the proprietary owners. And I got an answer.

And the answer that I got, which I wasn't terribly happy with but which I accepted, was that there had been a series of old correspondence and back and forthing and stuff, that in all of that, our lawyers were satisfied that INSLAW could sustain the claim in court, that we had waived those rights, not that I was wrong that we didn't have them but that somebody in the Department of Justice, in a letter or letters, as I say in this back and forthing, had, in effect, waived those rights.

That was the state of play. So when I wrote that letter -- this is a long answer to a short question, forgive me -- when I wrote that letter, I

said: The fly in the ointment appears to be the so-called data rights issue, which is the proprietary rights issue.

And I had concluded in good faith after aggressing the problem that unless there was movement on their part on that issue, not having anything to do with our counterclaim then, just a question of whether they have the right to collect royalties from us, that this was not susceptible of settlement and I so advised Mr. Ratiner on August 28, 1986.

Greg, do you have anything to add?

MR. WALDEN: No, nothing to add. This is the letter to correspondence. I don't know if I am jumping ahead of the game.

THE WITNESS: We will hold them in abeyance. We have two letters here dated January 8th, '87 and January 23rd, '87 and the January 8th letter is a letter to me from Mr. Ratiner and the January 23rd letter is a letter from me to Mr. Ratiner in response to January 8th. I mention that on the record.

BY MR. LYON:

Q. Sure.

Were you aware at the time of the response to Mr. Ratiner of August 28, 1986 that the Department of Justice had a request for proposals outstanding? That

RFP was for the purchase of computer hardware, software and services for the 94 U.S. Attorneys Offices, Criminal Division and the Tax Division?

A. I really don't remember but it is entirely possible and likely that I did, but I don't remember that I did. There came a point in time when I became very familiar with that but I really don't remember whether I knew about it then.

MR. WALDEN: I can't help you on that.

BY MR. LYON:

Q. It is alleged by Mr. Hamilton that although you state in the August 28, '86 letter to Ratiner that you felt his claim was unjustified and unjustifiable, that, in fact, you did not regard the claim as unjustifiable on the merits; it was that you knew that if INSLAW prevailed on that claim, there would be problems for the RFP because the silent predication, is the term he has used, silent predication in the RFP was that PROMIS software would be used in the hardware and software that was purchased pursuant to the RFP. That is the allegation.

Can you respond to that? That is a long question.

A. It is a long question. I would be glad to respond to questions that you want to put to me. I can

just say that it is utter nonsense, but I want to give some meat to it. I did not know at that time -- if I knew at all that the Eagle RFP, and certainly I had no idea, or PROMIS or how it dovetailed it, if at all, had nothing whatsoever to do with this letter.

So what is wrong with his allegation is that, No. 1, it is predicated, to use his word, on the assumption that I am a liar and I lied when I wrote this letter, which is sheer nonsense because I wouldn't have done that.

And as I said earlier, this was a good faith effort on my part not only to do that which I had undertook to do but a good faith effort on my part to do my job. And my job was to see that this case and 200,000 other cases that the Department of Justice handles and some of which get tricky and come to me, those that come to me, I handled professionally in the interest of the government.

And it would have been in the interest of the United States Government in my judgment to settle this and I had every incentive for doing that because I was a newcomer. I wanted to get rid of what obviously was an unhappy state of events, unhappy issue, and it would have been a great opportunity to do something constructive.

So I approached the whole subject with that kind of motivation and responded after I realized that until this tricky issue was resolved, there was nothing to be done.

BY MR. LYON:

Q. The next allegation, Mr. Burns, is that the Department of Justice arranged for a former colleague of Harry Jones, who was the U.S. Trustee in the Southern District of New York for some time, this colleague's name was Ken Rosen, who was an assistant U.S. Trustee in Manhattan, that the DOJ arranged for Mr. Rosen to be hired by AT&T Information Systems to represent AT&T Information Systems in the INSLAW bankruptcy proceedings in order to lend support to any motion for the liquidation of INSLAW pursuant to Chapter 7.

Do you have any response to that allegation?

A. It is ludicrous but, again, ask me questions.

Q. Do you know Ken Rosen?

A. I don't know. I do know that he was associated with my former law firm.

Q. And the name of your firm was what?

A. Burns, Summit, Rovins & Feldesman. Now, I think he was associated with my law firm at the time when I was leasing the apartment. If Ken Rosen walked into the room here now, I would not know who he was.

I am sure I must have met him. I don't know whether he overlapped with me in my firm by a year or a day or 10 minutes but certainly not more than a year, maybe a little more, because I would have known him. I made a point of knowing people but I just didn't know him. I have no recollection of knowing him. Maybe I did, so that's fine.

All I can say is, to give the lie to this allegation, is that I have no recollection of ever having spoken to Ken Rosen, as I speak now, ever. I probably did in the firm but I certainly never spoke with him by telephone, never met him, never saw him, never heard about him from the day I left my law firm on December 31, 1985 to the date of these presence.

Q. Do you know Harry Jones?

A. Yes, I do.

Q. How do you know him?

A. I know Harry Jones because he is a United States Trustee in the Southern District of New York. Unbeknownst to me at the time, i think Harry Jones got his start in this career of his by clerking for a former partner of mine whose name -- late partner, he is dead now -- a dear, dear friend of mine, by the name of Stanley T. Lesser, who was the United States Bankruptcy Court judge, but I never knew that until I had occasion

thereafter, that Harry Jones was a law clerk for Stanley Lesser, but I had occasion to meet Harry Jones, I think, after I became associated with the Department of Justice for the first time. I might have met him before then but I have no recollection.

I have had occasion to meet with him several times in bankruptcy conferences. He may have been in the office to stop by to say hello, maybe not, but I have seen him a couple of times since I became associated with the Department of Justice. And he is a very able young man and a very able United States Trustee. So yes, I do know him.

Q. Have you ever had any conversations about him that might have a bearing on the allegation that the Department arranged to have Ken Rosen to be hired by AT&T Information Systems to lend support --

A. Since I came to the Department of Justice, I don't think I have ever had a substantive conversation with Harry Jones about anything. Maybe I did but I have never discussed with him INSLAW directly, indirectly, obliquely or in any other way. And certainly I have never discussed -- the words "Ken Rosen" have never passed my lips and never passed his lips in my presence.

Q. All right.

MR. WALDEN: Is that clear on the record that

the words "Ken Rosen" never passed his lips in my presence and never passed my lips in his presence or by telephone, either way.

BY MR. LYON:

Q. It is further alleged that the Department of Justice encouraged AT&T Information Systems to breach a software contract that it had with INSLAW which it entered into in August of '84, thus worsening its situation.

Do you have any knowledge whatsoever about that allegation?

A. None whatsoever.

Q. Are you familiar with a --

A. The record should be clear that I can only testify as to my own knowledge and with respect to my own knowledge, I have no knowledge of anything, fact or circumstance or anything that would bear on that allegation so far as I can recall. I am trying very hard. This comes as a surprise to me.

Q. It is further alleged by Mr. Hamilton that a computer services company from Mount Vernon, Pennsylvania --

A. Thank God, I lived in Mount Vernon, New York, once.

Q. -- Mount Vernon, Pennsylvania called Systems

and Computer Technology, Inc., SCT, was encouraged by DOJ officials in 1986 to attempt a hostile takeover of INSLAW. The allegation is SCT was encouraged by Department officials to initiate a hostile takeover of INSLAW.

Do you have any response to that allegation?

A. I can have no response. I have no knowledge, information on this subject, no information sufficient to form a belief. I know nothing about it, never heard of it unless knowledge could be imputed to me by just having heard about it in a pleading or a paper that I may have scanned, but as I speak now, I have no knowledge or recollection of ever hearing it.

Q. The next allegation is that you and the Attorney General Edwin Meese, prevailed upon Leonard Garment of the law firm of Dickstein, Shapiro & Morin to instigate the removal of Lee Ratiner, counsel for INSLAW, in order to deprive INSLAW of effective legal representation, thus constituting an obstruction of Justice.

I would like to hand you a news article dated October 12, 1986 from the L.A. Times which has Lowell Jensen as a subject and ask you if you have ever seen that article?

A. I am sure I saw it. I don't remember it as I

speak now, but yes, I am sure I did.

Q. Our interpretation of this allegation --

A. Have you seen this?

MR. WALDEN: Yes, I believe you have too, a long time ago.

BY MR. LYON:

Q. Our interpretation of this particular allegation is that because INSLAW, Inc., with Mr. Ratiner as counsel at the time, named Lowell Jensen in a damages lawsuit that it filed against the Department of Justice as a person who was involved in a scheme to deprive them of their property and drive them into bankruptcy.

As a result of Mr. Ratiner of the Dickstein Shapiro firm doing that, you and the Attorney General contacted Mr. Garment, supervising partner of Dickstein Shapiro, and prevailed upon him to remove Mr. Ratiner as trial counsel. That's the nexus we have been able to establish based on what Mr. Hamilton submitted to the Department of Justice. That's the general framework on that allegation.

Do you recall anything -- first, have you had any conversations in that regard with Mr. Garment that you can tell us about?

A. Let me just -- let's try to chop away and hack

away at this big question.

First of all, I cannot speak for the Attorney General. I have no knowledge as to what he did or didn't do. I simply don't know. He certainly never told me that he had had any such discussion but you have to carve that out.

Q. All right.

A. Now, with respect to your question to me, the issue is whether I had any conversations with Mr. Garment about INSLAW in which reference was made to Lowell Jensen's being named as a defendant in a civil action and whether I tried to urge him to get rid of Lee Ratiner?

Q. Yes, sir.

A. Okay, that's the question. It says in this article that this suit was filed June 9th and that would be June 9th, I suppose, 1986, but I don't know. This article is dated October 12th, '86.

MR. WALDEN: That's right.

THE WITNESS: Let me cut away at it quickly. I have never, ever had any conversation with Len Garment about INSLAW or about Lee Ratiner or about Lowell Jensen, save one time. The occasion was one which we will have to pin down with the help of my secretary.

It was a purely social engagement at which I

was Len Garment's guest for lunch in a small Italian restaurant in Washington, D.C. and it was located, as I recall, in the building in which his office is located. I have never been to his office and I met him in the restaurant. So it is easy to pin down the name of it and so forth.

You will have to get help from Ann Weir as to the date and I think she can give you that date. If I had to guess, I would say that that social luncheon took place maybe in the late spring or early summer of '86 but, again, subject to Ann Weir's notes, we will pin it down.

Now, at that, we had a typical lunch, which meant it lasted an hour to an hour and 15 minutes. We talked about many things and none of them business matters, as I recall, none of them having to do with things that would involve the Department of Justice.

During the course of that conversation, I said to Leonard Garment -- and the conversation which I am about to relate took a total of no more than 90 seconds out of an hour and 15 minutes. And in that conversation there was no mention, as I recall now, so I am now answering your question, of Lowell Jensen being named as a defendant in a civil suit, no recollection of that whatsoever.

But I did mention to Garment that his law firm in the handling of this matter had in some way injected itself, not into my confirmation hearings, so I think, so it must have anti-dated -- that's part of the basis of my fixing it in time -- but that they had injected themselves in Lowell Jensen's confirmation hearings to become a United States District Court Judge.

And what I said was, very simply, I said: You know, we are lawyers. We are professionals. No case is not subject to resolution, people in good faith, and let's deal with it professionally. And the place to deal with it is as lawyers and not before a congressional hearing.

That was the full extent of the conversation and that took 90 seconds. It took a lot less time than it did for me to tell you because I gave you some background. I just told him you have this matter and this was injected in the Congress, not for me but for Lowell, and this is silly. If there are legal issues, let's sit down like professionals and resolve it and we went on to something else.

MR. BOBZIEN: Did he appear to be familiar with INSLAW?

THE WITNESS: No, not really. We never discussed it but I am sure he may have made a mental

note of it or may not have. We never discussed it, so I wouldn't know whether he was familiar with it or not.

BY MR. LYON:

Q. What matter were you referring to at the time?

A. INSLAW, and I probably said "this INSLAW case."

Q. Was there something specific that Ratiner or somebody else from Dickstein had done?

A. Yes. What they had done was, and I don't remember it now, but just as I testified earlier that a letter had been written to put the monkey wrench into my confirmation -- and I think that was later than this conversation -- they had written some letter, I think. There was something that had happened in that confirmation process that I thought was unlawyer-like.

Q. You were the Associate Attorney General at the time?

A. I don't know. It depends on the date. Once we fix the date, we will know.

Q. All right.

Do you recall being briefed by representatives of the Civil Division about meetings that they had had with Lee Ratiner that mentioned, among other things, the pending nomination of Lowell Jensen to be a district

judge in the context of maybe reaching a settlement on some of these issues between INSLAW and the Department? Do you recall any briefings that Civil might have given you about strong overtures by Ratiner, for instance?

A. You mean where they were blackmailing him? What's the purport of the question, where they were trying to use that as leverage?

Q. Yes.

A. Yes, I think so. That's right, that's how it was brought to my attention, obviously.

Q. We have been advised there were two meetings with Ratiner about that time frame that you have mentioned, late spring, early summer.

A. Yes.

Q. And that Civil further advised us that they brought it to your attention and that they thought --

A. Yes, that must be the source of my knowledge.

MR. WALDEN: Either through me, I may have briefed Arnie on that subject.

BY MR. LYON:

Q. Ratiner had been a little heavy-handed in some of his overtures about how to settle the case in the context of not impeding Lowell Jensen's possible confirmation. So you think that might have been it?

A. That clearly was the genesis. I have no

recollection of ever going to the Congress or having our OLA people or anybody tell me about it. Lowell certainly never told me about it, I don't think. They must be the source, either they directly or they through Greg Walden were the source of my knowledge.

MR. BOBZIEN: During the brief conversation with Garment at the restaurant, did you mention Ratiner by name?

THE WITNESS: I think I did, yes.

MR. BOBZIEN: Did you ever suggest in any way Ratiner be taken off the case or disciplined in any way for his action?

THE WITNESS: Categorically no. And it would have been utterly foolish in the extreme, and I say that with my special background as having been a senior partner in a substantial law firm.

Lee Ratiner was a partner of the firm, a principal in the firm. Partners don't go around castigating or chastising one another. It would have been foolish.

No, I never suggested that directly or indirectly. I would be foolish. I am glad you asked that. It was good to pin that down.

BY MR. LYON:

Q. Moving on to another aspect of this entire

matter, I would like to hand you a letter dated March 29, 1987, actually a copy, that William Tyson, former director of the Executive Office for U.S. Attorneys, sent to Judge Jensen. And it addresses the news article that appeared in the Washington Post on March 29, 1987 captioned "Justice and Lowell in Data Base Suit." I would like to hand you this, and take your time, please, to review it and then I will pose some questions on it.

A. What is your question?

Q. It is indicated in the upper right-hand corner that you sighted that letter on March 31st, 1987.

A. Upper right-hand corner of what?

Q. The first page of the letter.

A. It is indicated that I what?

Q. Saw.

A. I thought you said "cited."

Q. Sighted or saw.

A. S-i-g-h-t-e-d. I thought you were saying c-i-t-e-d.

Q. You saw the letter on March 31st?

A. I don't know whether I saw it on March 31st but I saw it.

Q. Could you tell us how it is that you were presented with that letter? Do you recall that at all?

A. No. All I can say is that Greg Walden kept me

informed of these things.

Q. There is a reference in the news article, I think generally alluded to in Mr. Tyson's letter, that somebody had declared at one point to William Hamilton or another INSLAW principal that there was a presidential appointee in the Department of Justice who was biased against INSLAW.

And I was wondering if you ever heard that reference before and, if so, do you have any knowledge of it?

A. Yes. The claim was, it came to me as other facts came to me through Greg and members of the Civil Division from time to time when they briefed me on this, that the allegation was that Judge Lowell Jensen had a long-seeded, long-time bias against INSLAW and that he in some way was contriving to hurt INSLAW because he had a personal animus against, not the people at INSLAW but the particular system.

And the allegation was going on to say that when Lowell was district attorney of Alameda County, that he had invented his own system and that, therefore, he had the pride of authorship or the pride of invention and to the extent that the INSLAW system was not the one he, himself, had developed, that he had a hostile bias toward it. That is what I heard.

Q. Did you ever have any discussions with Judge Jensen about that allegation?

A. I may have. I just don't recall any lengthy discussion. I honestly don't recall any lengthy discussion about it and that may be -- let's see the timing here. Yes, that is because he wasn't here when I heard about it but I don't recall having any discussion.

Q. Do you recall what his position was as far as the allegation went? Did he ever articulate it to you?

A. I heard through others that he thought it was foolish, that it was silly.

MR. LYON: Do you have anything else to add?

MR. BOBZIEN: No.

BY MR. LYON:

Q. The last matter we would like to talk about is a reference in --

A. I want to add something that I meant to call to your attention earlier. When we were talking about, a few minutes ago, about my conversation with Len Garment, that conversation was noted in an answer which I gave in an interrogatory. And without remembering any detail at all, someone picked that up and tried to start blowing it up into meetings with Ed Meese and me and so forth and so on, but there is an interrogatory that deals with that and then newspaper articles picked it up

later.

MR. BOBZIEN: I think that was Answer No. 6.

MR. WALDEN: I think the question was whether or not Mr. Burns had any discussions with Bob Wallach on the subject and the answer is no.

THE WITNESS: There was another question.

MR. WALDEN: I think it was Ed Meese with Leonard Garment. You have the document in front of you, fine.

THE WITNESS: I have a recollection there was a question about me and Garment but you look at it.

MR. LYON: We have answers from the Civil Division and we will look at it again.

BY MR. LYON:

Q. The last suggestion or allegation, matter we want to talk about this afternoon, Mr. Burns, involves a reference to supposed conversations that Bob Wallach may have had with you. This is raised in a submission I will put before you now and I will identify for the record as an opposition to an amended third and final petition for fees, I think, filed by INSLAW.

A. Yes.

Q. In this regard, have you had any contact with Bob Wallach, Robert E. Wallach, about any conversations that Mr. Wallach had or said he had with Judge Jensen in

August of '86?

A. Could you read that question?

THE REPORTER: "Question: In this regard, have you had any contact with Bob Wallach, Robert E. Wallach, about any conversations that Mr. Wallach had or said he had with Judge Jensen in August of '86?"

THE WITNESS: No. I never spoke with E. Robert Wallach at any time about INSLAW. What is today's date, '88? On July 3rd, 1987 I told Greg Walden that I had never spoken with Bob Wallach concerning INSLAW at any time. I mention that only because that could have been closer in time, I suppose.

MR. LYON: What was the context of that?

THE WITNESS: It was a memorandum Greg wrote.

MR. WALDEN: I believe it was pending discovery.

MR. LYON: I don't have any other questions on that last aspect.

Do you have anything you want to add on that or anything else we talked about today?

THE WITNESS: No.

MR. BOBZIEN: For the sake of completeness, were you going to address those two follow-up letters?

MR. WALDEN: One followed up from the other letter and the third followed from the second.

THE WITNESS: You may wish to have copies for your file.

THE WITNESS: We are finished?

MR. LYON: Yes, sir.

(Thereupon, at 3:30 p.m., the taking of instant deposition ceased.)

CERTIFICATE OF REPORTER

UNITED STATES OF AMERICA) ss.:

DISTRICT OF COLUMBIA)

I, Karen K. Brynteson, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by Karen K. Brynteson, Stenotype Reporter, was thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Karen K. Brynteson

Notary Public in and for

the District of Columbia

My commission expires: September 30, 1992